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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,403

01/16/2004

David V. Rowell

D-F 101-45

7482

7590

03/22/2007

Terry B. McDaniel  
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EXAMINER

MATZEK, MATTHEW D

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/759,403	Applicant(s) ROWELL ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. The amendment dated 12/21/2006 has been fully considered and entered into the Record. The Supplemental Application Data Sheet providing the city and state of each inventor has been entered into the Record. Therefore, the objection to the Oath has been withdrawn. Claim 1 has been amended to include the limitations of claims 2 and 3. Claims 2 and 3 have been canceled. Claims 1 and 4-15 are currently active. The 112 2<sup>nd</sup> rejection of claims 1-15 has been withdrawn due to amendment. The anticipation rejection of claims 1, 2 and 4-7 has been withdrawn because PEOPLES, Jr. failed to teach the use of yarn lubricant.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over PEOPLES, Jr. (US 4,568,581) in view of PARLIN (US 3,719,546).

a. PEOPLES, Jr. disclose nonwoven web used to form molded articles. (Refer to Col. 2, lines 7-8) The nonwoven web is formed from a needled blend of two or more different types of fibers, including relatively high melting fibers, and relatively low melting thermoplastic fibers which, when heated, form bonds and serve to bind together the fibers and provide the desired stiffness and shape retention characteristics. The high melting fibers may be blended with one or more types of lower melting thermoplastic fibers, such as liner low density polyethylene, high density polyethylene fibers, polypropylene fibers, lower melting polyesters, among others. Suitable high melting fibers include polyesters, nylon, glass, Nomex® and Kevlar®. The preferred high

melting fibers are polyester fibers. The reference teaches using high melting polyester fibers at a rate of from about 20% to about 70% by weight. (Col. 3, lines 49-68 through Col. 4, lines 1-12) In Figure 6, the reference shows the method of producing the nonwoven web and shows the inclusion of an optional third fiber component 17.

b. The Examiner equates the high melting polyester fibers of the reference to the presently claimed polyester fibers, it is noted that the range of 20-70% taught by the reference meets the presently claimed ranges. The low melting polypropylene fibers taught by the reference are equated to the presently claimed polypropylene fibers, and the teaching of having more than one low melting fibers component is equated to the claimed binder fiber since the low melting thermoplastic fibers serve to bind the fibers together. PEOPLES, Jr. is silent to the use of a yarn lubricant.

c. PARLIN is directed to a needled nonwoven fabric comprised of thermoplastic fibers in which, part of the fibers are mobile and carry a lubricant. (Refer to Col. 1, lines 8-24)

d. Since both references are directed to needled nonwoven fabrics, the purpose disclosed by PARLIN would have been recognized in the pertinent art of PEOPLES, Jr.

e. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the nonwoven of PEOPLES, Jr. and provide<sup>;</sup><sub>+</sub> with fibers that carry a lubricant with the motivation of allowing the mobile fibers to be deflected more readily by tufting needles that will result in little loss or change in the strength of the fabric when it is tufted. The lubricant also reduces pounding and noise due to tufting

operations and it prevents the tufting needles from reaching a temperature where damage to the tufting yarns may result. (Col. 1, lines 8-24 of PARLIN)

f. Although PEOPLES, Jr. and PARLIN do not explicitly teach the claimed fabric loss it is reasonable to presume that fabric loss of less than 4.0 wt% (less than 3.0 wt%, less than 2.0 wt%) after 1000 (or 1400 or 2000 or 2500 accordingly), cycles is inherent to the combined article of PEOPLES, Jr. and PARLIN. Support for said presumption is found in the use of like materials (i.e. the reference uses similar textile fibers and is made by a similar process of needling). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of fabric loss would obviously have been present one the combined product is provided.

#### ***Response to Arguments***

3. Applicant's arguments filed 12/21/2006 have been fully considered but they are not persuasive.

4. Applicant argues that Examiner's equating of PEOPLES, Jr.'s invention to that which is instantly claimed is an over-simplification of the claimed invention because in practice Applicants employ more than one form of polyester. This argument is not relevant to the issue at hand because, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). No claims recite the use of more than one type of polyester fiber.

5. Applicant argues that the increased wear of the instant invention is the result of an unmelted fiber blend of polyester and polyethylene fibers. This too is not recited in the claims.

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6. Applicant argues that there is no motivation to combine the inventions of PEOPLES, Jr. and PARLIN because PARLIN is directed to tufted carpets and PEOPLES, Jr. fails to teach the creation of a tufted carpet. The inventions of PEOPLES, Jr. and PARLIN are both directed to needled nonwoven fabrics. The use of lubricant in PARLIN is to assist in the needling process. The motivation to combine the two inventions is provided by PARLIN in that the lubricant prevents the damage of fibers in the nonwoven fabric during the needling process, which would be desirable in the needling process of PEOPLES, Jr.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mdm

*mdm*



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